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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - - X
UNITED STATES OF AMERICA) 06-CR-6042(L)
)
vs.)
) Rochester, New York
JOSE DE LA ROSA,) November 3, 2010
) 3:00 p.m.
Defendant.)
- - - - - X

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

WILLIAM J. HOCHUL, JR., ESQ.
United States Attorney
BY: FRANK H. SHERMAN, ESQ.
Assistant United States Attorney
6200 Federal Building
Rochester, New York 14614

M. KIRK OKAY, ESQ.
The Okay Law Firm
P.O. Box 622
Batavia, New York 14020
Appearing on behalf of the Defendant

ALSO PRESENT: Marinella Catalfamo, Interpreter
Kerry Chartier, U.S. Probation

COURT REPORTER: Christi A. Macri, FAPR, RMR, CRR, CRI
Kenneth B. Keating Federal Building
100 State Street
Rochester, New York 14614-0222

1 P R O C E E D I N G S

2 * * *

3 (WHEREUPON, the defendant is present).

4 THE COURT: Hello.

03:10PM 5 MR. OKAY: Good afternoon.

6 THE COURT: Mr. De La Rosa is here. I guess we need an
7 interpreter, so we'll swear in Ms. Catalfamo.

8 (WHEREUPON, the interpreter was sworn).

9 THE COURT: All right, good afternoon, Mr. De La Rosa.

03:10PM 10 THE DEFENDANT: Good afternoon.

11 THE COURT: The Court put this on the calender today for
12 several requests, for several reasons. I certainly understand
13 that Mr. De La Rosa entered his guilty plea over two years ago,
14 which is a long time. He entered it pursuant to a plea agreement
03:11PM 15 which provided some very serious penalties, but also contained a
16 cooperation provision.

17 And I guess I assumed that for at least some of the
18 delay, it was caused to make sure Mr. De La Rosa gets whatever
19 credit might be coming. So, I guess, I mean, I share in the
03:12PM 20 concern that this man has pleaded guilty two years ago and he
21 still hasn't been sentenced; he's sitting in a maximum security
22 facility.

23 I've got the plea agreement right here. I mean, I can
24 sentence him tomorrow, but I'm not sure that would be perhaps in
03:12PM 25 his best interest.

1 So maybe, Mr. Okay and Mr. Sherman -- well, I don't
2 know. Maybe I should hear from Mr. De La Rosa. I certainly
3 don't -- am not insisting that Mr. De La Rosa speak.

4 Mr. Okay, you may prefer he not, but if he wants to say
03:13PM 5 what concerns him, I'll hear --

6 THE DEFENDANT: Your Honor, my concern is that based on
7 the plea agreement and cooperation, I understand -- I have spoken
8 on several occasions with my attorney here, Mr. Okay. I have 54
9 months in custody, have been in custody for 54 months now -- 53
03:13PM 10 months.

11 And not -- according to the agreement, but what the plea
12 agreement says from, based on what was explained to me, it is that
13 based on cooperation, the judge would make a reduction at 63
14 months, which based on the 53 months, plus good time, it would
03:14PM 15 come out to 63 months served.

16 I know that the reduction has still not taken place, but
17 I have been sitting and the sentence has been postponed too many
18 times. And my lawyer is here to attest that I have been flexible
19 as far as cooperation. And based on the time, reduction of time
03:15PM 20 for cooperation, as far as I understand, I think that we are now
21 at the 63 months, sir.

22 And I have a -- if the Government gives that reduction,
23 I would have my 63 months, I would have to serve -- be in custody
24 four years, six months and 28 days. At the present time I have
03:16PM 25 been approximately four years and six months have been in.

1 On several occasions I have had the chance to talk about
2 it with my attorney, and if the Government allows the reduction,
3 he says that I can -- that I could be right.

03:17PM 4 MR. OKAY: Your Honor, if I can? Maybe by way of
5 clarification, I could amplify some of the things --

6 THE COURT: Let me just make sure Mr. De La Rosa is
7 finished. Are you finished?

8 MR. OKAY: Oh, I'm sorry.

9 THE COURT: Are you done?

03:17PM 10 THE DEFENDANT: Yes, I am done, sir.

11 THE COURT: Okay. Well, I have several reactions, but I
12 think maybe I should hear from Mr. Okay and Mr. Sherman relative
13 to where we are and anything else.

03:18PM 14 I repeat again, I guess for the third time, this case --
15 like several others involving cooperating defendants -- they often
16 linger for many, many months. I know that's not for any punitive
17 reason, but it's a fact.

18 So before I say more, Mr. Okay, you wanted to speak to
19 something?

03:18PM 20 MR. OKAY: Yes, thank you. The point Mr. De La Rosa is
21 trying to make is that in the plea agreement -- the plea agreement
22 has a cooperation section in which the Government has indicated
23 that if Mr. De La Rosa provides substantial assistance to the
24 authorities, the Government may move down to level 63 under the
03:19PM 25 guidelines, the sentencing table. That would be in criminal

1 history category I, the plea agreement, the guideline -- advisory
2 guideline range came out to offense level 32 and criminal history
3 category I, that's 121 to 151 months.

4 Then the cooperation portion contemplates a possible 5K
03:19PM 5 consideration down to level -- down to 63 months, which is the low
6 end of offense level 26 and criminal history category I.

7 Now, Mr. De La Rosa's been in custody since June of 2006
8 so -- and this is assuming that he gets the good time from the
9 Bureau of Prisons, which is discretionary with them. But there is
03:20PM 10 a chart that we have, that my client has that calculates the good
11 timetable. I'm sure that the Court may have seen this, I'm sure
12 that the Government knows what this is. And when you look at a 63
13 month sentence, in months it says, you know, sentence years, 5
14 years, three months and then good time in days, 247 days. So then
03:20PM 15 it says actual time to serve: Four years, six months, 28 days.

16 Now, the Government is proposing an adjournment of the
17 sentencing that was scheduled for this afternoon adjourning it
18 until May of 2011. If that's the case, then assuming
19 Mr. De La Rosa gets the good time, that 63 month timeframe with
03:20PM 20 the good time would run sometime in February of 2011, which is
21 before May of 2011, which is when the -- it now appears the
22 Government is contemplating a -- well, possible 5K down to this
23 golden 63 months that we have had before us since the time that
24 the plea was entered more than two years ago.

03:21PM 25 So my client and I have been discussing the possibility

1 of moving the Court for withdrawal of the guilty plea on the
2 grounds that it will soon become an impossibility of fact to ever
3 get to this 63 months, at least before the time of sentencing.

4 And that essentially is the upshot of, I think, what
03:21PM 5 Mr. De La Rosa is trying to say and the posture that the case is
6 in now. And we want to continue to do the right thing, we want to
7 continue living up to our obligations under the plea agreement and
8 the cooperation portion and all of that, but as the Court
9 doubtless has gleaned, there's some frustration on the part of the
03:22PM 10 defense.

11 We don't have much power here. The only power that we
12 have really, the only ace that we have in the hole, so to speak,
13 is that 63 months that the Government put in the cooperation
14 portion of the plea agreement. And there's no question but that
03:22PM 15 that was an incentive for us to plea because this is a mandatory
16 minimum case, and the only way around that mandatory minimum under
17 the guidelines is to a 5K.

18 So that's where we are. The Court can do a couple of
19 different things. It could put the case -- schedule a sentencing;
03:22PM 20 or it could schedule a briefing order for the defense to file an
21 application to withdraw the guilty plea. We don't want to do that
22 because we don't want to lose our credibility with the Government.

23 But on the other hand, you know, May is, you know, a
24 ways down the road here; it's November 3rd now. And so that's the
03:23PM 25 posture that we're in.

1 And I spoke with my colleague for the Government and
2 he's indicated to me that if the sentencing were to go forward at
3 this time, and I could be -- this may not still be on the table,
4 but he's indicated to me that at this point the Government would
03:23PM 5 only move on a 5K down to the 10 year mandatory minimum.

6 So those are the parameters of the case as we stand
7 before the Court this afternoon.

8 THE COURT: All right. I will hear from the Government,
9 but I think Mr. De La Rosa is focusing on the last part of
03:23PM 10 paragraph 29 of the plea agreement that does reference guideline
11 offense level 26. And I guess assuming we have a criminal history
12 category I, that level 26 under the guidelines which, of course,
13 are advisory, is 63 to 78 months.

14 That language, I don't read it to say anything more than
03:24PM 15 if the Government makes a motion for leniency for a departure, at
16 least as of the date of the drafting of the agreement, the
17 Government is not going to make a motion for anything lower or
18 less than, I guess, the low end of the range, which is 63 months.

19 MR. OKAY: Correct, that's accurate.

03:24PM 20 THE COURT: Wasn't really a promise?

21 MR. OKAY: Right.

22 THE COURT: Certainly it binds this Court as to what this
23 Court could do.

24 And I understand Mr. De La Rosa's concept that if it --
03:25PM 25 focusing on 63, I think he's concerned that pretty soon he's going

1 to already have served that 63 months, and then -- and any kind of
2 benefit he sought to get from this agreement would be a nullity
3 because he's already served it.

03:25PM 4 This plea agreement, as the Government often does, the
5 Government must act in good faith and has indicated that in good
6 faith may make a motion under 5K, which deals with the guidelines.

7 But to get below the statutory minimum of 10 years, the
8 Government has to make a motion under the statute,
9 Section 3553(e). But if the Government does not make that motion
03:26PM 10 under 3553(e), the Court thinks it's done in good faith, then the
11 Court's ability is limited to imposing at least at this time the
12 10 year minimum sentence.

13 There is, of course, a whole other set of procedures
14 which we lawyers refer to as "Rule 35," which means even if the
03:26PM 15 Court were to sentence Mr. De La Rosa today, I might not be able
16 to impose a sentence less than 10 years, but assuming there
17 continues to be cooperation, the rules provide that some time
18 later the Government can come back to me and say, Judge, we think
19 now you should grant Mr. De La Rosa a greater reduction.

03:27PM 20 I can't prevent Mr. De La Rosa from filing motions to
21 withdraw his plea, but I think that, in my view, would be a very
22 risky thing because it could and probably would jeopardize the
23 beneficial parts of this plea agreement, and it might be a sign to
24 the Government that Mr. De La Rosa no longer wants to cooperate.

03:27PM 25 And I don't think after all this time Mr. De La Rosa

1 wants to be put in that position. Withdrawing his plea is not
2 going to get him sentenced any sooner; it probably would result in
3 him being sentenced even later. So Mr. De La Rosa needs to
4 understand that.

03:27PM

5 I understand his frustration, and I'm sure Mr. Sherman
6 may wish to speak to this as to why we are here two years later
7 without the ability to resolve this, although Mr. Sherman might
8 also want to speak to whether there's some benefit sentencing
9 Mr. De La Rosa now, giving him some benefit, and then leaving open
10 the possibility there could be even more of a benefit under our
11 Rule 35.

03:28PM

12 But, Mr. Sherman, what say you?

03:28PM

13 MR. SHERMAN: Your Honor, I understand Mr. De La Rosa's
14 frustration also. This has been an ongoing conversation with him
15 for well over a year concerning the timing of his sentencing, and
16 I believe we may even have appeared in front of the Court once
17 before about this issue.

03:28PM

18 As the Court noted, the plea agreement when it was
19 negotiated two years ago outlined the best case scenario from the
20 Government's viewpoint of what Mr. De La Rosa potentially could
21 earn in the way of credit. And Mr. De La Rosa has certainly
22 provided assistance for which ultimately the Government would ask
23 the Court to give him some credit.

03:29PM

24 The reason the Government has proposed to delay his
25 sentencing until at least May at this point is because

1 Mr. De La Rosa, as he knows, is anticipated to be a Government
2 witness in the case of *United States vs. Genaro Torres*, which this
3 Court just scheduled for May.

4 That case and that testimony, as I have explained to
03:29PM 5 Mr. De La Rosa, is the most valuable thing that he will do in the
6 course of his assistance in terms of getting credit, which the
7 Government recommends to the Court.

8 I have told him in our discussions on a number of
9 occasions that the Government, if he insisted, would not object to
03:30PM 10 a sentencing earlier than that.

11 I've also explained to him that I would not recommend
12 based on what has happened so far any reduction to the Court below
13 the mandatory minimum at this point, and that the Rule 35 option
14 was a possibility.

03:30PM 15 I've also explained to Mr. De La Rosa from the
16 Government's viewpoint in terms of what I think he wants to have
17 happen, that if he's going to spend any time in incarceration, I
18 believe this is not the geographical area that he wants to do it
19 and, ultimately, from the Government's standpoint in terms of
03:30PM 20 preparing for trial and continuing to have meetings with him, it
21 was problematic to sentence him, have the marshal ship him out of
22 the district and have to bring him back again for the other
23 proceedings that we would need him to participate in before he got
24 his final recommendation.

03:31PM 25 So it's really at this point in terms of that an issue

1 that the Government is not -- if Mr. De La Rosa wants to do it --
2 objecting to an earlier sentencing, but I am making clear, apart
3 from the fact it hasn't even been discussed within my office yet,
4 there is not going to be -- it has not been discussed within my
03:31PM 5 office yet, there is not going to be a recommendation any time
6 before May to go below the mandatory minimum.

7 And that position is based on the history of the case
8 and the history of the Government's relationship with
9 Mr. De La Rosa, which I don't think would be in anybody's interest
03:31PM 10 to detail right now.

11 THE COURT: So are you saying that the bulk of the
12 cooperation or the very significant part of it is the anticipated
13 testimony in the *Torres* case?

14 MR. SHERMAN: Yes. And, again, just to make clear,
03:32PM 15 because I think Mr. Okay misspoke a couple times unintentionally,
16 the plea agreement, as well as the presentence report, indicate
17 that without acceptance of responsibility, the offense level was
18 39, not 31. And the guideline range in both the plea agreement
19 and in the presentence report, the low end of it was 188 months.

03:32PM 20 In order to get to the 63 months, it would have required
21 this Court to grant a motion of a ten level reduction from the
22 plea agreement guideline level. And without the testimony that's
23 anticipated at this trial, there is no way in the world that the
24 Government would even think about recommending a ten level
03:32PM 25 reduction for Mr. De La Rosa.

1 So that's where we are.

2 THE COURT: I understand all of that, and I think if we
3 go to May, if the Government is favorably impressed with
4 Mr. De La Rosa's testimony, so much so that the Government in its
03:33PM 5 wisdom moves under 5K and also under the statute, in fact, does
6 what the Government said it might do, that is, recommend a
7 sentence at the lowest end of level 26, that's not going to do
8 Mr. De La Rosa much good because he already would have apparently
9 served more than that.

03:33PM 10 MR. SHERMAN: Well, when that was put into the plea
11 agreement, it was put in without knowing totally what he would do
12 in the future and simply because there was some discussion about
13 having an understanding of where the Government might be willing
14 to go to.

03:34PM 15 There was never any promise by the Court or the
16 Government that he would ever get to that number.

17 THE COURT: I understand.

18 MR. SHERMAN: And I understand that the math works out
19 that he might not get realistically to 63 months, but if -- May is
03:34PM 20 still a long way from 188 months.

21 THE COURT: Well, it is. Everything you say is certainly
22 well-taken by the Court. And I think Mr. De La Rosa, if he does
23 everything in the world and everybody thinks this is just the best
24 type of cooperation since cooperation was created --

03:34PM 25 MR. SHERMAN: I would also point out, Your Honor --

1 THE COURT: -- he's not going to get -- I don't want to
2 say the benefit of the bargain because that may not be exactly the
3 way to discuss it, but he had hoped if he did everything possible
4 that he could do and that you were impressed with it, you would
03:35PM 5 say to me, Judge, sentence him to the low end of the guideline
6 range, which is 63 months.

7 For this scenario, by the time I do that, he's going to
8 have served many months more than that. Maybe that's just too
9 bad. Maybe that's life, but --

03:35PM 10 MR. SHERMAN: I don't want to -- I'm not being cavalier
11 about it at all, but the reality is that Mr. De La Rosa, upon
12 completion of his sentence, is going to go into Immigration
13 custody, and so he's not getting out of custody.

14 And the Government, if he had finished his sentence,
03:35PM 15 would arrange for him to be held here until that trial occurred
16 under any circumstances. So one way or the other he will be in
17 custody until at least May.

18 THE COURT: All right. Well, I guess the other thing --
19 is Mr. De La Rosa at Batavia or Monroe County?

03:35PM 20 MR. OKAY: Actually, he's in Allegany County.

21 THE COURT: Allegany County. Well, some defendants
22 prefer to get to an institution where they have some programs
23 other than a maximum facility. I don't know if the Government
24 needs Mr. De La Rosa here each and every day between now and May.

03:36PM 25 But I guess the final -- not the final thing, but one of

1 the final things I might say, Mr. De La Rosa, is that if you keep
2 doing the right thing here, continue to cooperate, the Government
3 thinks it's important that you testify in this *Torres* case. If
4 you don't do that, you're not going to get much of any
03:36PM 5 consideration from the Government.

6 But if you do that, and the Government makes a motion to
7 me under both what's called a "5K motion" and also under the
8 statute where they say to me, Judge, Mr. De La Rosa's done so well
9 we think you could go below the statutory minimum of 10 years,
03:37PM 10 once that happens I don't necessarily have to follow what the
11 Government recommends.

12 They could say, Judge, sentence him to eight years. I
13 could say, no, I think it should be seven or six or five. I can
14 also say it should be higher, but I guess the point I'm trying to
03:37PM 15 make is, believe it or not, the Court has some say in this, too,
16 if the Government is happy with what you do and files motions
17 which allow me to go below the statutory minimum. The guidelines
18 are guidelines. I always have the ability for a stated reason to
19 not sentence within them.

03:38PM 20 So I know it's been a long time and it looks like it's
21 still going to be a couple months, I had forgotten about
22 apparently an Immigration detainer. So I hope, as frustrated as
23 you are, you don't want to jump into something that may undo all
24 of this and result in you having a longer sentence than you might
03:38PM 25 otherwise have. That's the danger here. That, you know, beware

1 of what you ask for. If you want to withdraw your plea, there's a
2 lot of parts of this plea agreement that go down the drain, too.

3 So maybe, I mean, if the request is you be sentenced, I
4 guess I could do that, but it looks like it wouldn't be less than
03:38PM 5 10 years. May sound like a long way away, especially if you're in
6 jail, but you're getting -- you're getting closer. And the more
7 you do good, the more you help the Government, the more ability I
8 might have to give you a break.

9 THE DEFENDANT: Excuse me, Your Honor. I have had
03:39PM 10 several communications with my attorney, and I have always
11 communicated to him that I am not against continuing with my
12 cooperation.

13 THE COURT: Good, good.

14 THE DEFENDANT: I would like to just go back and
03:40PM 15 apologize because I do not know about the laws. In October of
16 2008, on October 14th, that was the day that I pled guilty. The
17 explanation that was given to me pertaining to the plea agreement
18 was very different the one that I am hearing right now.

19 I'm not telling you that my lawyer explained to me that
03:41PM 20 I had -- that I had 63 months for negotiations. He never told me
21 that. The only thing he explained to me was that if we cooperated
22 with the Government, we would obtain or get 63 months if the
23 Government puts forth that motion.

24 One of the main reasons why I also pled guilty, I just
03:41PM 25 want to make this clear, was because when my attorney was going to

1 step out of the meeting that we had on October 14th, I heard
2 someone say to me, "You are Latino, you are Dominican, what do you
3 think about 12 people who are going to be the jury? What do you
4 think is going to happen if you go to trial? I think that just for
03:42PM 5 being a Dominican, they will find you guilty."

6 One of the other reasons was the drug program that was
7 if the Government allowed me to plead, because I did not know how
8 much time I had to do this, but that was one of the main reasons
9 why I pled guilty.

03:43PM 10 I sent you a letter in the summer explaining to you in
11 Spanish and English. In the Spanish letter I explained to you,
12 perhaps it was wrongdoing on my part if I said something about my
13 attorney, but I want to clarify this right now. My lawyer never
14 at any time said to me that I had 63 months.

03:44PM 15 MR. OKAY: Your Honor, perhaps --

16 THE COURT: What do you mean by that last statement? I
17 don't understand when you said your lawyer never said you had 63
18 months.

19 THE DEFENDANT: In the sense that the letter that I sent
03:44PM 20 to you saying -- saying that my attorney had said 63 months, 63
21 months, perhaps it was not explained well to me. 63 months, as
22 the Government says, will be when I am done with my cooperation.
23 Or he will -- he will ask for that motion, depending on what he
24 says, but the letter that I sent you, it was not well-expressed.

03:45PM 25 THE COURT: All right. Well, thank you for your apology.

1 You don't have to apologize. You're confused. That's why we're
2 here.

3 At the time of the plea, the plea agreement was
4 translated for you by a different interpreter, and the plea
03:45PM 5 agreement does not anywhere say that you were definitely going to
6 get 63 months. Maybe you hoped that if you did everything, that
7 that's what the sentence would be actually.

8 If you do everything, the Court has the ability to
9 sentence even below 63 months if the Government makes the motion
03:46PM 10 and asks me to go below the statute. I'm not saying that's what
11 I'm going to do, but I have the power to do that.

12 So I'm glad to hear that you want to continue to
13 cooperate; is that correct?

14 THE DEFENDANT: Yes, sir.

03:46PM 15 THE COURT: Because I think that's important to the
16 Government and, therefore, it's important to you.

17 Without a plea agreement and without the Government
18 asking me to give you leniency, you're looking at big time, you're
19 looking at a lot of time. And although May is six months away, I
03:47PM 20 don't think it will be wasted time in the sense that it counts
21 toward whatever sentence I end up giving you.

22 So I don't hear you to say now you want to change your
23 mind about pleading guilty; is that correct?

24 THE DEFENDANT: Correct.

03:47PM 25 THE COURT: Okay. Well, I think that's because -- it's a

1 good thing because I think if you wanted to withdraw your plea and
2 if I granted it, which is not guaranteed, it certainly could
3 affect everything you've done up to this point and maybe would
4 affect your ability to cooperate.

03:48PM

5 So I think we've had a good talk here. I will not
6 forget you. I have set the trial in May. It's regrettable that I
7 couldn't set it sooner, but that was my fault, and I think it will
8 be here soon enough.

9 So are we all okay now?

03:48PM

10 THE DEFENDANT: Yes, sir.

11 MR. OKAY: Your Honor, is there any way the Court could
12 make a recommendation to him -- to have Mr. De La Rosa moved to
13 Batavia for a couple of reasons? One, it's not because the food
14 there is better, but also he's down now -- it's a two hour drive
15 for me to get down there to Allegany County from my office in
16 Batavia, and I have to go down with an interpreter. So that's,
17 you know --

03:49PM

18 THE COURT: I will recommend it. I don't know -- there's
19 a lot of issues that go into where inmates are placed; some have
20 to do with so-called enemies, if there are other people in the
21 jail that he might be cooperating against, that's one factor. We
22 don't have unlimited bed space. This is not like the Sheraton
23 that we can move people willy-nilly.

03:49PM

24 MR. OKAY: I would also make the request --

03:49PM

25 THE COURT: I'm not sure at this point until we get close

1 to sentencing, and I guess more especially close to trial, perhaps
2 the Government has an interest in having Mr. De La Rosa not down
3 in Allegany County, but in Batavia.

03:49PM 4 MR. OKAY: Also, my understanding is that Batavia there
5 is some programming that's available to the inmates there whereas
6 in Allegany County there's nothing; there's not even English
7 classes in Allegany County, for example. So I appreciate that.

03:50PM 8 MR. SHERMAN: Your Honor, until very recently, because of
9 separation issues, Mr. De La Rosa could not go to Batavia. I have
10 spoken to Deputy Marshal Pfohl about the fact that the current
11 population at Batavia, at least as far as I understand it, would
12 not require any separation for Mr. De La Rosa at Batavia. They
13 still have some serious space issues, but I have spoken to him
14 about possibly getting Mr. De La Rosa moved to Batavia from
03:50PM 15 Allegany County.

16 THE COURT: Well, I would urge the Government to do that,
17 to work with the marshals. I think it would help the Government
18 as they get ready for trial; it would help Mr. Okay; and I think
19 apparently it would help Mr. De La Rosa.

03:50PM 20 Sir, we're trying to get you moved a little closer here
21 to Batavia where they have fine dining, all right?

22 THE DEFENDANT: Thank you, sir.

23 MR. OKAY: Thank you very much, Your Honor.

03:51PM 24 THE COURT: All right, so stick with it. We're getting
25 close and we'll look forward to seeing you in a couple of months

1 when you come here and testify.

2 MR. OKAY: Are we going to set a sentencing date now or
3 is it going to be down the road or --

4 THE COURT: Well, I assume from our discussion it's --
03:51PM 5 you're content to wait until after the May trial? I can do it
6 pretty quickly after that. I would think what happens there is a
7 matter of a few short days. I've got the presentence report. All
8 I need is the Government's recommendation.

9 I don't hear you to say you want him to be sentenced now
03:51PM 10 and just get the 10 years?

11 MR. OKAY: We would not be making that request at this
12 point, absolutely not.

13 THE COURT: So thank you, sir. We will try to get you
14 moved and we'll see you in a couple months.

03:52PM 15 MR. OKAY: Thank you.

16 THE COURT: We are adjourned without date.

17 (WHEREUPON, the proceedings adjourned at 3:52 p.m.)

18 * * *

19 CERTIFICATE OF REPORTER

20 I certify that the foregoing is a correct transcript to the
21 best of my ability of the record of proceedings in the
22 above-entitled matter.

23

24 S/ Christi A. Macri

25 Christi A. Macri, FAPR-RMR-CRR-CRI
Official Court Reporter